20 S. D. 18, 104 N. W. 522. *Contra*, *Walker* v. *State*, 8 Ind. 290. But a different result in New Jersey may be based on the criminal procedure statute which allows reversal only when the defect in form substantially prejudices the defendant in maintaining his defense. N. J. CRIM. PROC. ACT, 1898, § 163.

DEEDS — CONSTRUCTION AND OPERATION IN GENERAL — WARRANTY DEED OF TIMBER. — For consideration the plaintiffs by warranty deed conveyed to the defendant, its heirs and assigns forever, all pine and cypress timber on certain land with the right to enter on the land for full turpentine and timber purposes. Thereafter for ten years the defendants removed no timber, whereupon the plaintiffs filed a bill in equity for cancelation of the deed as a cloud upon their title. *Held*, that a decree of cancelation will be granted. *McNair & Wade Land Co.* v. *Parker*, 59 So. 959 (Fla.).

It was early decided that a fee simple in timber may be conveyed by deed. *Barrington's Case*, 8 Co. 136 *b*; *Clap* v. *Draper*, 4 Mass. 266. But such an agreement is so unusual in nature and involves such serious consequences to the grantor, that no deed should be so construed, unless such is the manifest intention of the parties. See *McNair & Wade Land Co.* v. *Adams*, 54 Fla. 550, 555, 45 So. 492, 494; *Pease* v. *Gibson*, 6 Me. 81, 84. In the principal case there is no absolute grant of all timber forever growing upon the land. And the conveyance of the timber at present there is for specific uses, which require it to be cut and removed. Such a conveyance has been rightly decided not to pass an absolute fee. *Patterson* v. *Graham*, 164 Pa. St. 234, 30 Atl. 247; *McNair & Wade Land Co.* v. *Adams*, *supra*. Some courts hold that by a constructive severance the trees become the grantee's chattels, but his right of removal lapses within a reasonable time or such time as the deed specifies. *Zimmerman* v. *Daffin*, 149 Ala. 380, 42 So. 858; *Hoit* v. *Stratton Mills*, 54 N. H. 109. A better view, however, since not based on a fiction, holds that title passes subject, by an implied condition, to defeasance on failure of the grantee so to remove. *McRae* v. *Stilwell*, 111 Ga. 65, 36 S. E. 604. *Cf. Saltonstall* v. *Little*, 90 Pa. St. 422. On this view the principal case is correct.

DIVORCE — ALIMONY — MODIFICATION OF A DECREE WHICH ADOPTED AGREEMENT BETWEEN THE PARTIES. — In a suit for divorce *a vinculo*, a decree for permanent alimony incorporating an agreement between husband and wife was granted to the wife. On the wife's remarriage, the husband petitioned for a modification of the decree in accordance with the changed conditions of the parties. *Held*, that the decree should not be modified. *Emerson* v. *Emerson*, 45 Chic. Leg. N. 122 (Circ. Ct. of Baltimore City). See NOTES, p. 441.

EMINENT DOMAIN — COMPENSATION — EFFECT OF CHANGE OF USE. — The defendant's assignor by eminent domain proceedings acquired the right to flood the plaintiff's land for his grist mill. An electric-light plant was later substituted for the grist mill. The plaintiff seeks to enjoin the flooding of his land for the electric-light plant. *Held*, that the defendant may continue to flood the land on paying for the damage sustained by the operation of the electric-light plant over and above that which would be sustained by the operation of the grist mill. *Lucas* v. *Ashland Light Mill & Power Co.*, 138 N. W. 761 (Neb.). See NOTES, p. 439.

EMINENT DOMAIN — COMPENSATION — MORTGAGEE'S CLAIM ON FUND PAID INTO COURT. — Land held under a lease was taken by eminent domain proceedings, and the value of the lessee's interest was paid into court. The lessee had mortgaged his term and was also in arrears in rent. The lease contained a stipulation giving the lessor a right to enter for default in rent, but this right had not been exercised at the time the eminent domain proceed-